

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

SEP 1 10 00 AM '03
FBI FILE COPY ORIGINAL

In the Matter of)	
)	
Lockheed Martin Corporation, COMSAT)	
Corporation, and COMSAT Digital Teleport, Inc ,)	IB Docket No 02-87
Assignors, and)	
)	
Intelsat, Ltd , Intelsat (Bermuda), Ltd.,)	
Intelsat LLC, and Intelsat USA License Corp ,)	
Assignees,)	
)	
Applications for Assignment of Earth Station and)	
Wireless Licenses and Section 214 Authorizations)	
and Petition for Declaratory Ruling)	

ORDER ON RECONSIDERATION

Adopted: August 15, 2003

Released: August 18, 2003

By the Chief, International Bureau and the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1 By an Order and Authorization ("*Comsat/Intelsat Order*") released October 25, 2002 in the above-captioned docket, the International Bureau and Wireless Telecommunications Bureau approved the applications of Lockheed Martin Corporation ("Lockheed Martin"), Comsat Corporation and Comsat Digital Teleport, Inc (collectively, "Comsat" and, with Lockheed Martin, "Assignors"), and Intelsat, Ltd , Intelsat (Bermuda), Ltd., Intelsat LLC, and Intelsat USA License Corp (collectively, "Intelsat" or "Assignees" and, together with Assignors, "Applicants") to assign certain common carrier and non-common carrier earth station licenses, private land mobile radio ("PLMR") licenses, and international section 214 authorizations from Assignors to Intelsat.¹ On November 25, 2002, PanAmSat Corporation ("PAS") filed a petition for reconsideration of those elements of the *Comsat/Intelsat Order* that permit some of the Intelsat companies, post closing, to continue providing service to all markets on an

¹ The *Comsat/Intelsat Order* also modified the regulatory status of the common carrier earth station licenses to dual-use common carrier and non-common carrier use and issued a declaratory ruling that the public interest would not be served by prohibiting the proposed indirect foreign ownership of Intelsat LLC in excess of the twenty-five percent benchmark set by section 310(b)(4) of the Communications Act. See *Lockheed Martin Corporation, COMSAT Corporation, and COMSAT Digital Teleport, Inc , Assignors, and Intelsat, Ltd , Intelsat (Bermuda), Ltd , Intelsat LLC, and Intelsat USA License Corp., Assignees, Applications for Assignment of Earth Station and Wireless Licenses and Section 214 Authorizations and Petition for Declaratory Ruling, Order and Authorization*, DA 02-2254, IB Docket No. 02-87, 17 FCC Rcd 27732, 27765-66, ¶¶ 55-57 (Int'l Bur. & WTB 2002) See also the Communications Act of 1934, 47 U.S.C. §§ 214(a), 310(b)(4), 310(d).

unregulated, private carrier basis.² On November 24, 2002, Litigation Recovery Trust ("LRT") filed a petition for reconsideration seeking revocation of the grant of the applications or, in the alternative, seeking grant of the applications subject to "strict conditions as defined in the proposed protective orders heretofore submitted by LRT."³ We dismiss PAS's petition, and we deny LRT's petition in all respects.

II. BACKGROUND

2 Intelsat, Ltd., the privatized successor to the International Satellite Telecommunications Organization ("INTELSAT"), owns and operates a global satellite system providing space segment capacity for communications services.⁴ Intelsat, Ltd. is the ultimate parent of all other companies in the group, including Intelsat LLC, the Title III licensee; Intelsat USA License Corp., the international section 214 authorization holder, and Intelsat USA Sales Corporation, the contracting party for Intelsat's U.S. customer contracts.⁵ Comsat Corporation served as the U.S. Signatory to INTELSAT prior to INTELSAT's privatization from an intergovernmental organization on July 18, 2001, subsequently was acquired by Lockheed Martin, and continued to operate as a major U.S. distributor of Intelsat system capacity and a provider of ground services, network management services, and other value-added services incorporating Intelsat capacity.⁶

3 Upon the closing of the transaction, Intelsat LLC, which already held the Title III C-band and Ku-band space station authorizations for the Intelsat system, also became the licensee of Comsat's earth stations and PLMR facilities.⁷ Intelsat USA License Corp. became a common carrier holding the

² See PAS Petition for Partial Reconsideration, IB Docket No. 02-87 (filed Nov. 25, 2002) ("PAS Petition"), at 1-2. PAS was not a party to the underlying proceeding, but states, at 2 n.2, that there was "good reason" why PAS did not participate in the earlier stages of the proceeding. In this regard, PAS argues that "it was not apparent from the public notice" in the proceeding that in granting the applications the Commission might "eliminate dominant carrier regulation" for services to "non-competitive markets." PAS Petition at 2 n.2.

³ See LRT Petition for Reconsideration, IB Docket No. 02-87 (filed Nov. 24, 2002) ("LRT Petition"), at 2. Applicants oppose the PAS and LRT petitions. See Opposition to Petitions for Reconsideration, IB Docket No. 02-87 (filed Dec. 13, 2002) ("Opposition"), see also Motion to Extend Time (filed Nov. 27, 2002; granted Nov. 27, 2002). On December 26, 2002, PAS filed a reply. See Reply to Opposition to Petition for Partial Reconsideration, IB Docket No. 02-87 (filed Dec. 26, 2002) ("PAS Reply"). LRT purposefully delayed filing its reply until after the reply due date. See Reply of Litigation Recovery Trust, IB Docket No. 02-87 (filed Jan. 7, 2003) ("LRT Reply"), at 1 n.1 (stating that "LRT delayed the filing of this Reply until the submission of [comments in MB Docket No. 02-277 and] LRT has not sought leave for this slight delay as it does not believe such a filing to be necessary"). On January 21, 2003, Applicants filed a letter in response to the replies. See Letter from David B. Meltzer, General Counsel and Senior Vice President for Regulatory Affairs, Intelsat Global Services Corporation and Gerald Musarra, Vice President, Trade and Regulatory Affairs, Lockheed Martin Corporation to Secretary, Federal Communications Commission (filed Jan. 21, 2003) ("January 21 Letter").

⁴ See *Comsat/Intelsat Order*, 17 FCC Rcd at 27734, ¶ 3.

⁵ See *Comsat/Intelsat Order*, 17 FCC Rcd at 27734-36, ¶¶ 3-6.

⁶ See *Comsat/Intelsat Order*, 17 FCC Rcd at 27734, ¶ 2.

⁷ See *Comsat/Intelsat Order*, 17 FCC Rcd at 27736-37, ¶ 7, 27747-48, ¶ 24. The Applicants consummated the transaction on November 25, 2002. See Letter from Rosemary C. Harold, Counsel for Applicants, to Secretary, Federal Communications Commission, IB Docket No. 02-87 (filed Dec. 17, 2002) (notifying the Commission, pursuant to its rules, of the consummation of the transaction).

international section 214 authorizations previously held by Comsat.⁸ In acquiring Comsat's international section 214 authorizations, Intelsat USA License Corp. agreed to accept the regulatory status that had been applicable to Comsat in its provision of certain international common carrier services on "thin" routes.⁹ Thus, Intelsat USA License Corp. is treated as dominant in its provision of space segment capacity for switched voice and private line services on thin routes, and for these routes is subject to the alternative rate requirements adopted in the *Comsat Alternative Rate Regulation Order*.¹⁰ On November 25, 2002, the day the Applicants consummated assignment of the licenses and authorizations, Intelsat USA License Corp. adopted all applicable tariffs and amendments that Comsat had filed with the Commission prior to that date.¹¹

III. DISCUSSION

A. PAS Petition for Partial Reconsideration

4 PAS did not participate in the earlier stages of this proceeding. In filing its petition, PAS footnotes that it had "good reason" not to participate earlier because, it states, it couldn't have known that the Commission planned to "eliminate" dominant carrier regulation on thin routes.¹² Section 1.106(b)(1) of the Commission's rules provides that a person who is not a party to a proceeding but seeks to file a petition for reconsideration in the proceeding "shall state with particularity the manner in which the person's interests are adversely affected by the action taken, and shall show good reason why it was not possible for him to participate in the earlier stages of the proceeding."¹³ PAS has met neither arm of this

⁸ See *Comsat/Intelsat Order*, 17 FCC Rcd at 27737, ¶ 7, 27745, ¶ 21. Intelsat USA Sales Corporation or Intelsat Global Services Corporation, another Intelsat Ltd. subsidiary, absorbed the non-common carrier business operations of the former Comsat Corporation/Comsat World Systems. See *id.* at 27737, n.24.

⁹ In 1998, the Commission had found that Comsat lacked market power in the provision of transmission capacity for switched voice and private line services on competitive, or "thick," routes that included one or more fiber optic submarine cables and possessed market power on "thin" routes where no submarine cable was available and Comsat generally was the only provider of satellite services. See *Comsat Corporation, Petition Pursuant to Section 10(c) of the Communications Act of 1934, as amended, for Forbearance from Dominant Carrier Regulation and for Reclassification as a Non-Dominant Carrier*, Order and Notice of Proposed Rulemaking, FCC 98-78, 13 FCC Rcd 14083, 14100-01, ¶ 28, 14176-14183, Appendix A (1998) ("*Comsat Non-Dominance Order*") (finding that point-to-point routes between the United States and foreign countries can be grouped into two distinct geographic markets – thick and thin routes – because the markets within each of the two groups have similar characteristics, and listing 63 thin routes for the provision of switched voice and private line services). In 1999, the Commission adopted incentive-based price regulation of Comsat's provision of capacity for switched voice and private line services on thin routes. See *Comsat Corporation, Policies and Rules for Alternative Incentive Based Regulation of Comsat Corporation*, Report and Order, IB Docket No. 98-60, FCC 99-17, 14 FCC Rcd 3065 (1999) ("*Comsat Alternative Rate Regulation Order*").

¹⁰ See *Comsat/Intelsat Order*, 17 FCC Rcd at 27766, ¶ 58.

¹¹ See Letter from David B. Meltzer, Director, Intelsat USA License Corp., to Secretary, Federal Communications Commission, IB Docket No. 02-87 (filed Nov. 25, 2002) ("*Tariff Letter*") (notifying the Commission, pursuant to its rules, of Intelsat USA License Corp.'s adoption of Comsat's tariffs).

¹² PAS Petition at 2 n.2.

¹³ 47 C.F.R. § 1.106(b)(1) (2002).

test

5 PAS has not stated with particularity how it is adversely affected.¹⁴ Nor has PAS shown good reason why it was not possible for PAS to participate in the earlier stages of this proceeding. The *Comsat/Intelsat Order* did not “eliminate” dominant carrier regulation on thin routes, as PAS suggests.¹⁵ Nor, for that matter, did it change the regulatory status of the non-common carrier services that the Intelsat companies already had been authorized to provide.¹⁶ Rather, the *Comsat/Intelsat Order* required that Intelsat USA License Corp., in acquiring the international section 214 authorizations of Comsat, be regulated, like Comsat, as a common carrier subject to dominant carrier alternative rate regulation in its provision of switched voice and private line services on thin routes.¹⁷

¹⁴ In seeking to file its petition without having participated in the earlier stages of IB Docket No. 02-87, PAS merely states, in a footnote “There is ‘good reason’ why [PAS] did not participate in the earlier stages of this proceeding. See 47 C.F.R. § 1.106(b)(1) (2002). It was not apparent from the Public Notice in this matter, DA 02-951 (rel. Apr. 24, 2002), that in granting the above-captioned applications the Commission might eliminate dominant carrier regulation for switched voice, private line, and occasional use video services to non-competitive markets.” PAS Petition at 2 n.2. Although the PAS Petition mentions occasional use video, Comsat discontinued occasional use video in 2001 and Intelsat USA License Corp. has not sought authority to provide this service. See *Section 61.19 Application of Comsat Corporation for Authority under Section 214 of the Communications Act to Discontinue the Provision of Occasional-Use Television, Occasional-Use IBS Services, and Part-Time IBS Services*, Memorandum Opinion and Order, DA 01-2904, 16 FCC Rcd 22396 (Int’l Bur. 2001); Opposition at 3 n.3.

¹⁵ See PAS Petition at 2 n.2.

¹⁶ The Intelsat companies were providing non-common carrier services prior to the *Comsat/Intelsat Order*. See, e.g., *Direct Access to the INTELSAT System*, Report and Order, IB Docket No. 98-192, FCC 99-236, 14 FCC Rcd 15703, 15704, ¶ 1 (1999) (adopting direct access policy to permit INTELSAT to provide space segment capacity directly to U.S. users rather than requiring users to continue to purchase capacity indirectly through Comsat), *Applications of Intelsat LLC for Authority to Operate, and to Further Construct, Launch, and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit*, Memorandum Opinion, Order and Authorization, FCC 00-287, 15 FCC Rcd 15460, 15478, ¶ 40 (2000) (“*Intelsat LLC Licensing Order*”) (concluding that Intelsat LLC was not operating, and should not be required to operate, as a common carrier, and denying PAS’s request to treat Intelsat LLC as a dominant carrier), Order on Reconsideration, FCC 00-437, 15 FCC Rcd 25234, 25255, ¶ 54 (2000) (“*Intelsat LLC Licensing Reconsideration Order*”) (affirming that PAS had provided no rationale as to why an additional layer of regulation of Intelsat LLC was necessary to protect U.S. ratepayers, as long as the Commission regulated as dominant the entity that controlled the satellite capacity useful in providing much of the services on thin routes); *Applications of Intelsat LLC for Authority to Operate, and to Further Construct, Launch, and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit*, Memorandum Opinion, Order and Authorization, FCC 01-183, 16 FCC Rcd 12280, 12302, ¶ 67 (2001) (“*INTELSAT ORBIT Act Compliance Order*”) (reaffirming that Intelsat LLC should not be treated as a common carrier). The *Comsat/Intelsat Order* declined to impose common carrier status on Intelsat LLC or Intelsat USA Sales Corporation. *Comsat/Intelsat Order*, 17 FCC Rcd at 27749, ¶ 28, 27754-55, ¶ 34.

¹⁷ See *Comsat/Intelsat Order*, 17 FCC Rcd at 27766, ¶ 58. Moreover, the *Comsat/Intelsat Order* would require Intelsat LLC to file for any necessary section 214 authority if it should seek to provide common carrier earth station services directly to the public rather than continuing to provide earth station capacity to Intelsat USA License Corp. and Intelsat USA Sales Corporation. See *Comsat/Intelsat Order*, 17 FCC Rcd at 27747, ¶ 24, 27750, ¶ 29.

6 We find that PAS reasonably should have anticipated that we would rule in this fashion consistent with prior Commission decisions. In the *Intelsat LLC Licensing Reconsideration Order*, the Commission concluded that there was no basis for imposing dominant carrier regulation on Intelsat LLC's provision of space segment services merely because the Commission had regulated Comsat as dominant on thin routes, stating, "[PAS] provides no explanation as to why an additional layer of regulation on Intelsat LLC is necessary to protect U.S. ratepayers as long as Comsat controls INTELSAT satellite capacity useful in providing much of the services to thin route countries."¹⁸ Similarly, in the *Comsat/Intelsat Order*, we concluded

We find no reason in the record to change the determination reached by the Commission in the *Intelsat LLC Licensing Reconsideration Order*. In that decision, the Commission concluded that there was no basis for imposing dominant carrier regulation on Intelsat LLC's provision of space segment services merely because the Commission had regulated Comsat as dominant on thin routes [footnote omitted]. As noted, it is now Intelsat USA License Corp., through its acquisition of Comsat's common carrier contracts, that would control the Intelsat capacity useful in providing much of the services to thin-route countries. As the Commission observed in the *Intelsat LLC Licensing Reconsideration Order*, petitioners provide no rationale as to why an additional layer of regulation of Intelsat LLC is necessary to protect U.S. ratepayers, as long as the Commission regulates as dominant the party that controls the satellite capacity useful in providing much of the services on thin routes [footnote omitted].¹⁹

We conclude that PAS could have appreciated that the docket might address its concerns about the regulatory status of the various Intelsat companies. In fact, the parties raised the possibility of regulating the various Intelsat subsidiaries as common carriers and subject to dominant carrier regulation, and PAS could have filed a pleading in support of those comments.²⁰ Thus, PAS has not shown good cause why it could not have participated in the earlier stages of this proceeding. Therefore, we dismiss, with prejudice, the PAS Petition, and the PAS Reply, for not meeting the requirements of section 1106(b)(1).²¹

7 Notwithstanding the above infirmities of the PAS Petition, the *Comsat/Intelsat Order* provides a remedy to the underlying concerns raised by PAS.²² Intelsat USA License Corp. is a common

¹⁸ *Intelsat LLC Licensing Reconsideration Order*, 15 FCC Rcd at 25255, ¶ 54.

¹⁹ *Comsat/Intelsat Order*, 17 FCC Rcd at 27749-50, ¶ 28. See also *id.* at 27755, ¶ 34 (declining to impose common carrier regulation on Intelsat USA Sales Corporation).

²⁰ See *Comsat/Intelsat Order*, 17 FCC Rcd at 27745-46, ¶ 21, 27749, ¶ 26 (petitioners supported dominant carrier or dominant carrier-like regulation of Intelsat USA License Corp. and Intelsat LLC), see also *id.* at 27752, ¶ 31 (petitioners seeking to change terms of common carrier contracts with Comsat were concerned that the proposed division of common carrier and private carrier services offered the Intelsat companies an opportunity to discriminate).

²¹ See 47 C.F.R. § 1.106(b)(1) (2002). See also Opposition at 2-3 (arguing that the Commission should dismiss the PAS Petition on procedural grounds because PAS provides no legitimate justification for not participating earlier).

²² PAS essentially argues that permitting any of the Intelsat companies to continue to serve thin routes on a private carrier basis eviscerates the protections adopted in the *Comsat Alternative Rate Regulation Order* now (continued)

carrier in its provision of services – via the common carrier contracts it received from Comsat and the Comsat tariffs it has adopted – and is subject to dominant carrier regulation in the provision of switched voice and private line services on thin routes.²³ If needed, the *Comsat/Intelsat Order* provides a mechanism for the Commission to reassess the regulatory status of Intelsat LLC or Intelsat USA Sales Corporation pursuant to *NARUC I*.²⁴ U.S. carriers may petition to impose common carrier status on Intelsat LLC or Intelsat USA Sales Corporation by presenting information that either entity is operating, or should operate, as a common carrier in its provision of service on thin routes.²⁵ At the same time, we note that the transaction authorized by the *Comsat/Intelsat Order* helps to further a primary objective of the Open-Market Reorganization for the Betterment of International Telecommunications Act (“the ORBIT Act”), that of assuring that the post-privatization Intelsat transforms itself into a strong commercial entity, similar in its operations to other commercial entities, such as PAS, that provide international satellite services.²⁶

B. LRT Petition for Reconsideration

8 LRT participated in the earlier stages of this docket, as it has in opposing many proceedings involving Comsat and its successors or assigns over the past several years.²⁷ The LRT Petition reiterates (Continued from previous page) —————

that one of the Intelsat companies has market power on thin routes, even though that company, Intelsat USA License Corp., is regulated as a common carrier and subject to the dominant carrier regulation adopted in the *Comsat Alternative Rate Regulation Order*. See PAS Petition at 1-3, PAS Reply at 4.

²³ See *Comsat/Intelsat Order*, 17 FCC Rcd at 27766, ¶ 58. See also Opposition at 3 (advising that Intelsat USA License Corp. already has adopted Comsat’s tariffs and stating that such adoption demonstrates compliance with the alternative rate regulation set out in the *Comsat Alternative Rate Regulation Order*), Tariff Letter, *supra* note 11, at 1 (stating that Intelsat USA License Corp. had adopted Comsat’s tariffs).

²⁴ See *National Association of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630, 642 (D.C. Cir. 1976) (“*NARUC I*”).

²⁵ See *Comsat/Intelsat Order*, 17 FCC Rcd at 27750, ¶ 28, 27755, ¶ 34. See also *Availability of Intelsat Space Segment Capacity to Users and Service Providers Seeking to Access INTELSAT Directly*, Order, IB Docket No. 00-91, FCC 02-316, 17 FCC Rcd 24242, 24246 n.27 (2002) (Intelsat customers may file complaints relevant to Intelsat’s role as a U.S. licensee and within the Commission’s legal purview). If we were to require common carrier status, we also could assess whether to apply dominant carrier regulation.

²⁶ See 47 U.S.C. § 761 NOTE (“It is the purpose of this Act to promote a fully competitive global market for satellite communication services for the benefit of consumers and providers of satellite services and equipment by fully privatizing the international satellite organizations, INTELSAT and Inmarsat”), see also *INTELSAT ORBIT Act Compliance Order*, 16 FCC Rcd at 12282, ¶ 7 (“A pro-competitive privatization of INTELSAT will make it a more effective competitor and promote fairer and more robust competition in the global satellite market”), *Comsat/Intelsat Order*, 17 FCC Rcd at 27745, ¶ 20 (the authorized assignments would accelerate the transformation of the Intelsat companies into commercial entities on par with other competitive providers of international transmission service capacity).

²⁷ See *Comsat/Intelsat Order*, 17 FCC Rcd at 27740, ¶ 14 & n.46 (citing to a series of Commission orders denying LRT’s various petitions seeking reconsideration of Commission decisions granting authority to Lockheed Martin and Comsat). As the Commission has noted before, LRT represents certain individuals and entities that, over several years and in various fora including the Commission, unsuccessfully have been pursuing claims against Comsat and/or its successors or assigns. See, e.g., *Lockheed Martin Global Telecommunications, Comsat Corporation, and Comsat General Corporation, Assignor, and Telenor Satellite Mobile Services, Inc., and Telenor Satellite, Inc., Assignee, Applications for Assignment of Section 214 Authorizations, Private Land Mobile* (continued . . .)

several of LRT's prior contentions. The Commission previously has addressed and rejected these contentions, and we reject them again below. We find these contentions and the remaining LRT arguments to be frivolous, as discussed below.²⁸ Moreover, we find the LRT Petition to be procedurally defective.²⁹ In addition, LRT delayed its reply until after the reply due date, intentionally did not seek leave to file the late-filed pleading, and apparently did not serve the reply on the parties to the proceeding.³⁰ We hold LRT to the requirements of the Commission's rules.³¹

9 The Commission previously has cautioned LRT that it should not file frivolous pleadings.³²

(Continued from previous page)

Radio Licenses, Experimental Licenses, and Earth Station Licenses, and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act, Order on Reconsideration, FCC 02-207, 17 FCC Rcd 14030, 14031, ¶ 2 (2002) ("Comsat/Telenor Reconsideration Order")

²⁸ A pleading may be deemed frivolous if there is no good ground to support it or it is interposed for delay or based on arguments that have been specifically rejected by the Commission. See *Public Notice, Commission Taking Tough Measures Against Frivolous Pleadings*, FCC 96-42, 11 FCC Rcd 3030 (1996) ("Frivolous Pleadings Notice").

²⁹ In particular, we find the LRT Petition to be procedurally defective because, when its 11-point typeface and 1.5 line spacing are converted to the required 12-point typeface and double spacing, the petition exceeds 30 pages, considerably longer than the prescribed 25 page limit for petitions for reconsideration. See 47 C.F.R. §§ 1.49(a), 1.106(f) (2002). Furthermore, the rules provide that the length of any document filed in electronic form shall be equal to the length of the document if printed out and formatted according to the specifications of § 1.49(a) or shall be no more than 250 words per page. See 47 C.F.R. § 1.49(f)(2) (2002). LRT's petition, even without its attachment, exceeds 8000 words, which would equate to 320 words for each of 25 pages. Therefore, it would be within our discretion to reject the pleading as unacceptable for filing. See 47 C.F.R. § 1.49(a) (2002), see also 47 C.F.R. § 1.48 (2002) (requests to file extra-long pleadings shall not be routinely granted).

³⁰ See LRT Reply at 1 n. 1 (stating that "LRT delayed the filing of this Reply until the submission of [comments in MB Docket No. 02-277 and] LRT has not sought leave for this slight delay as it does not believe such a filing to be necessary.") See also January 21 Letter, *supra* note 3, at 1 n. 2 (arguing that the LRT Reply, filed two weeks late and not served on Applicants or their counsel, should be summarily dismissed). We note that the copy of the LRT Reply submitted to the Commission's Electronic Comment Filing System fails to include a service list.

³¹ See 47 C.F.R. § 1.46(a) (2002) ("It is the policy of the Commission that extensions of time shall not be routinely granted.") Moreover, with respect to the LRT Reply, we are unable to determine that LRT served the parties as required by the Commission's *ex parte* rules. See 47 C.F.R. §§ 1.1200-1.1216 (2002). As this is a restricted proceeding, see 47 C.F.R. § 1.1208 (2002), we are referring the LRT Reply to the Commission's Office of General Counsel ("OGC") as a possible prohibited *ex parte* presentation. See 47 C.F.R. § 1.1212(c) (2002) (prohibited written *ex parte* presentations shall be forwarded to OGC). Because we are dismissing the LRT Reply, with prejudice, as procedurally deficient, see *infra* ¶ 9, we are not considering the LRT Reply in determining the merits of this proceeding.

³² See *Comsat/Telenor Reconsideration Order*, 17 FCC Rcd at 14035, ¶ 10, *Lockheed Martin Corporation, Comsat Government Systems, LLC, and Comsat Corporation, Applications for Transfer of Control of Comsat Corporation and its Subsidiaries, Licensees of Various Satellite, Earth Station Private Land Mobile Radio and Experimental Licenses and Holders of International Section 214 Authorizations*, Order on Reconsideration, FCC 02-197, 17 FCC Rcd 13160, 13168-69, ¶ 19 (2002) ("Comsat/Lockheed Reconsideration Order"), *Comsat Corporation d/b/a Comsat Mobile Communications, et al.*, Order on Reconsideration, FCC 02-200, 17 FCC Rcd 13179, 13187-88, ¶ 9 (2002) ("Comsat L-Band Licensing Reconsideration Order"), *Lockheed Martin Corporation, Authority to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed-*
(continued)

Here, LRT restates arguments that the Commission previously has ruled upon in this and other proceedings. As described in earlier Commission decisions, LRT and/or its members have exhibited a documented pattern of conduct with regard to Comsat and/or its successors or assigns that indeed appears to go beyond legitimate advocacy.³³ In such cases, it is well-established that the Commission and its staff may impose sanctions upon parties participating in Commission proceedings if these parties file pleadings primarily for abusive purposes.³⁴ The Commission expressly has warned LRT and/or its members that they may face summary dismissal of their pleadings or the alternative procedure of prior screening of their pleadings should they file abusive or harassing pleadings with the agency.³⁵ As discussed below, the LRT Petition raises no new issue causing us to reconsider our earlier decision in the *Comsat/Intelsat Order*. Therefore, we deny, in all respects, the LRT Petition and we dismiss, with prejudice, the late-filed LRT Reply.

10. We once again reject the arguments LRT has raised previously in both this and other proceedings. First, contrary to LRT's assertions, the Commission has found Comsat and its successors or assigns to be qualified as licensees, and we affirm that Assignors are qualified to assign the relevant licenses and authorizations at issue in this docket.³⁶ Second, contrary to LRT's contentions, our foreign

(Continued from previous page)

Satellite Service, Order on Reconsideration, FCC 02-198, 17 FCC Rcd 13170, 13173, ¶ 8 (2002) ("*Comsat Ka-band Licensing Reconsideration Order*"), *Litigation Recovery Trust, Petition for Declaratory Ruling Seeking a Determination that Comsat Corporation Has Violated the Satellite Act in Making Acquisitions of Stock in Various Other Companies*, Memorandum Opinion and Order, FCC 02-199, 17 FCC Rcd 13175, 13177-78, ¶ 6 (2002) ("*Denial of First Petition*"), *Litigation Recovery Trust, Petition for a Determination Whether Comsat Corporation Has Violated the Public Interest Standard of the Communications Satellite Act, 47 U.S.C. § 701 Through the Transmission of Indecent Material or Violated 47 U.S.C. § 721 Through Unauthorized Purchases of Stock in Specified Corporations*, Memorandum Opinion and Order, FCC 02-279, 17 FCC Rcd 21852, 21857-58, ¶ 11 (2002) ("*Denial of Second Petition*")

³³ See *supra* note 32

³⁴ See *id.*, see also *Application of Nationwide Communications, Inc.*, Memorandum Opinion and Order, FCC 98-7, 13 FCC Rcd 5654, 5655-56, ¶ 5 (1998) ("*Nationwide*"). In considering challenges to applications, "the Commission need [not] allow the administrative processes to be obstructed or overwhelmed by captious or purely obstructive protests." *Nationwide*, 13 FCC Rcd at 5655, ¶ 5, citing *United Church of Christ v. F.C.C.*, 359 F.2d 994, 1005 (D.C. Cir. 1966). The Commission has authorized its Bureaus and Offices to impose sanctions upon participants whose primary purpose is to abuse the Commission's processes. See *Frivolous Pleadings Notice*, 11 FCC Rcd at 3030. Given the goal of encouraging participation in Commission proceedings, however, the Commission only considers such sanctions in egregious cases where the abusive nature of the pleadings is clear. See *Nationwide*, 13 FCC Rcd at 5655, ¶ 5. In this regard, the Commission is justified in summarily dismissing pleadings filed primarily to harass an applicant rather than to air legitimate, substantive objections relevant to the proceeding in which they are filed. See *id.* Alternatively, should a party engage in such an abusive course of conduct before the agency, the Commission may decide to require the party to obtain the Commission's prior permission to file documents based on a showing of public interest. See *In re Martin Trigona*, 592 F. Supp. 1566, 1568 (D. Conn. 1984), *In re Notice to John Cervase*, Letter from Secretary, Federal Communications Commission by direction of the Commission, FCC 75-891, 54 F.C.C. 2d 1039 (1975).

³⁵ See *Comsat/Telenor Reconsideration Order*, 17 FCC Rcd at 14035, ¶ 10; *Comsat/Lockheed Reconsideration Order*, 17 FCC Rcd at 13168-69, ¶ 19; *Comsat L-Band Licensing Reconsideration Order*, 17 FCC Rcd at 13187-88, ¶ 9, *Comsat Ka-band Licensing Reconsideration Order*, 17 FCC Rcd at 13173, ¶ 8; *Denial of First Petition*, 17 FCC Rcd at 13177-78, ¶ 6, *Denial of Second Petition*, 17 FCC Rcd at 21857-58, ¶ 11.

³⁶ The Commission repeatedly has rejected LRT's argument that Comsat and its successors or assigns are unqualified as licensees. Compare LRT Petition at 7 (reiterating LRT's argument that Comsat and its successors

(continued...)

ownership ruling properly followed Commission precedent, and we affirm that ruling here.³⁷ Third, contrary to LRT's arguments, we affirm here, as we have before, that the sale of Comsat's assets is not a violation of the ORBIT Act.³⁸ Fourth, contrary to LRT's argument that we erred in not adopting LRT's proposal to "strip Comsat (and Lockheed) of all proceeds received" from the Comsat/Intelsat transaction to fund a "digital conversion fund," we affirm here that, not only has LRT *not* demonstrated that Comsat and its successors or assigns "have purposely, repeatedly and routinely violated laws, rules and policies administered by the Commission," but, additionally, we continue to find LRT's proposed "remedy" to have no relevance to the issues in this proceeding other than the fact of Comsat's involvement.³⁹ Finally, contrary to LRT's bald assertions that "LRT has submitted substantive evidence of Comsat's continuing,

(Continued from previous page)

or assigns, through Comsat's subsidiary ElectroMechanical Systems, Inc ("EMS"), engaged in fraud and failed to disclose criminal and civil actions and thus are unqualified to be assignors) with *Comsat/Intelsat Order*, 17 FCC Rcd at 27740-41, ¶ 14 (concluding that Comsat and Lockheed Martin are qualified assignors of licenses and authorizations), *Comsat/Lockheed Reconsideration Order*, 17 FCC Rcd at 13165-68, ¶¶ 14-18 (denying with prejudice and in all respects LRT's petition for reconsideration, and stating, "We find that the EMS matter falls far short of giving rise to an issue of Comsat's overall qualifications as a Commission licensee"); and *Comsat L-Band Licensing Reconsideration Order*, 17 FCC Rcd at 13187, ¶ 8 (stating that the Commission has addressed and rejected LRT's allegations that Comsat is not a qualified Commission licensee because of the EMS matter, and has found that Comsat has complied with Commission requirements in notifying the Commission of the EMS matter). See also Opposition at 6

³⁷ Commission policy adopts a rebuttable presumption that indirect foreign investment by World Trade Organization Member entities is in the public interest. See *Rules and Policies on Foreign Participation in the U.S Telecommunications Market*, Report and Order and Order on Reconsideration, FCC 97-398, 12 FCC Rcd 23891, 23940, ¶ 111 (1997), Order on Reconsideration, FCC 00-339, 15 FCC Rcd 18158 (2000); *Application of VoiceStream Wireless Corporation, Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee, for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and for Declaratory Ruling Pursuant to Section 310 of the Communications Act*, Memorandum Opinion and Order, FCC 01-142, 16 FCC Rcd 9779, 9810-11, ¶ 51 (2001), *Comsat/Telenor Reconsideration Order*, 17 FCC Rcd at 14033, ¶ 5. LRT has not rebutted that presumption. We also reject, as frivolous, LRT's arguments, see LRT Petition at 13-16, that we "failed to properly limit foreign control of Intelsat" because, according to LRT: (1) the applications are "purposely misleading and, in fact false" as Intelsat "has confirmed that a number of its shareholders (presumably including Lockheed) would be seeking to sell their shareholdings" in the future; (2) our foreign ownership ruling "is without factual basis;" and (3) based on "evidence" submitted by LRT in the Comsat/Telenor case, our "analysis of predatory practices is overly simplistic." See also Opposition at 6-7

³⁸ LRT states that the *Comsat/Intelsat Order* erred in concluding that the assignment of licenses and authorizations to Intelsat is consistent with the goals and objectives of the ORBIT Act. See LRT Petition at 9. LRT raised this issue, and the Commission rejected its arguments, in the *Comsat/Telenor* proceeding. See *Comsat/Telenor Reconsideration Order*, 17 FCC Rcd at 14034-35, ¶ 9 (disagreeing with LRT's contention that Lockheed Martin's decision to dispose of the operations of Comsat Mobile Communications contravened the ORBIT Act, or that a decision to sell all Comsat assets would represent a further "violation" of the ORBIT Act), see also *Comsat/Lockheed Reconsideration Order*, 17 FCC Rcd at 13163 n.10; Opposition at 7. We remain unpersuaded by LRT's argument.

³⁹ Compare LRT Petition at 18-20 with: *Comsat/Intelsat Order*, 17 FCC Rcd at 27763-64, ¶ 52; *Comsat/Lockheed Reconsideration Order*, 17 FCC Rcd at 13162-63, ¶ 8, 13169, ¶ 20. See also *Comsat Corporation*, Memorandum Opinion and Order, FCC 97-422, 13 FCC Rcd 2714, 2729, ¶ 33 (1998), *recon denied*, FCC 00-337, 15 FCC Rcd 19156 (2000), in which the Commission emphasized that Comsat was a private corporation not subject to government management; Opposition at 8

deliberate and consistent violations of the rules and regulations of the Commission” that requires “strict regulation of future activities,” including various protective orders, we affirm our earlier conclusion that LRT has failed to advance a basis for issuing a protective order, or other relief, that has not been considered previously by the Commission or otherwise is supported by the facts of this proceeding.⁴⁰ In sum, LRT has presented no new evidence that would cause us to reconsider our prior determinations, and we therefore, again, reject each of LRT’s contentions.

11. LRT’s remaining arguments also are frivolous. LRT contends that “it is far from clear” that the scope of the Executive Branch’s evaluation of national security concerns, as reflected in our decision in the *Comsat/Intelsat Order*, “is sufficient.”⁴¹ LRT, although stating that national security considerations are matters reserved to the appropriate U.S. government agencies and departments, argues that “there is every reason to establish the proposed special task force [of the Commission and the Executive Branch] to assess whether the Applications raise any national security implications.”⁴² We disagree, again, that establishing a task force is necessary.⁴³ We also reject LRT’s argument that Lockheed Martin Global Telecommunications (“LMGT”), a unit of Lockheed Martin, is a “non-existent company” and thus, according to LRT, that the assignments authorized in the *Comsat/Intelsat Order* “are invalid on their face.”⁴⁴ As Applicants aver, Lockheed Martin has not closed LMGT, which continues to exist, and, in fact, is not a party of interest in the assignment transactions.⁴⁵ We reject LRT’s contention that we made “a fatal error in executing the Commission’s delegated responsibilities” in the *Comsat/Intelsat Order* because, within the context of the applications before us, we declined to order the Applicants to file additional transactional documents in the docket, as requested by LRT.⁴⁶ In this

⁴⁰ Compare LRT Petition at 12-13 with *Lockheed Martin Global Telecommunications, Comsat Corporation, and Comsat General Corporation, Assignor, and Telenor Satellite Mobile Services, Inc., and Telenor Satellite, Inc., Assignee, Applications for Assignment of Section 214 Authorizations, Private Land Mobile Radio Licenses, Experimental Licenses, and Earth Station Licenses and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act*, Order and Authorization, FCC 01-369, 16 FCC Rcd 22897, 22920, ¶ 60 (2001), *erratum*, DA 02-266, 17 FCC Rcd 2147 (IB 2002) (LRT’s Petition for Protective Orders is denied), *Comsat/Intelsat Order*, 17 FCC Rcd at 27763-64, ¶ 52 (LRT failed to advance a basis for issuing a protective order). See also Opposition at 8, *Lockheed Martin Corporation, Comsat Governmental Systems, LLC, and Comsat Corporation, Applications for Transfer of Control of Comsat Corporation and Its Subsidiaries, Licensees of Various Satellite, Earth Station, Private Land Mobile Radio and Experimental Licenses, and Holders of International Section 214 Authorizations*, Order and Authorization, FCC 00-277, 15 FCC Rcd 22910, 22918, ¶ 23 (2000), *erratum*, DA 00-1789, 15 FCC Rcd 23506 (SRD/IB 2000), *Comsat-Lockheed Reconsideration Order*, 17 FCC Rcd at 13163-64, ¶ 11.

⁴¹ See LRT Petition at 17.

⁴² *Id.* at 17.

⁴³ See *Comsat/Intelsat Order*, 17 FCC Rcd 27762-63, ¶¶ 50-51 (referencing Federal Bureau of Investigation letter conveying to Commission no objection or other comment, and denying LRT request for special task force). See also Opposition at 8.

⁴⁴ See LRT Petition at 4.

⁴⁵ See Opposition at 8-9.

⁴⁶ See LRT Petition at 5-6. See also *Comsat/Intelsat Order*, 17 FCC Rcd at 27763-64, ¶ 52 (declining to order filing of transactional documents); Opposition at 8.

regard, we deny LRT's request that we "revoke the [*Comsat/Intelsat Order*], secure the transactions documents from the parties and place them on the FCC Internet site reserved for the transaction, and, after appropriate time for review, solicit additional comments from all interested parties."⁴⁷ Finally, we again find LRT's contention that we must suspend action in the proceeding because of press reports that Intelsat may be considering acquiring Eutelsat, S A , a major satellite company in Europe, to be speculative and of no decisional significance in this proceeding.⁴⁸ In this regard, we deny LRT's request that we "undertake a full investigation of Intelsat's expansion plans," including a "review of all Intelsat board minutes in which the Eutelsat acquisition and any other similar transactions have been discussed."⁴⁹

IV. CONCLUSION

12 We affirm our decision in the *Comsat/Intelsat Order*. For the reasons stated above, we conclude that the petitions of PAS and LRT are procedurally defective. Further, we conclude that the LRT Petition raises no new argument that either has not been considered previously by the Commission or otherwise is supported by the facts of this proceeding.

V. ORDERING CLAUSES

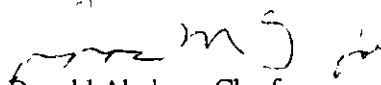
13 Accordingly, IT IS ORDERED that the above-referenced PAS Petition and the PAS Reply hereby are DISMISSED, with prejudice, for the reasons stated herein.

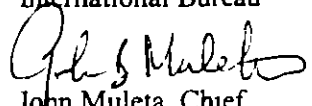
14 IT IS FURTHER ORDERED that the above-referenced LRT Petition hereby is DENIED in all respects, for the reasons stated herein.

15 IT IS FURTHER ORDERED that the above-referenced late-filed LRT Reply hereby is DISMISSED, with prejudice, for the reasons stated herein.

16. IT IS FURTHER ORDERED that the above-referenced LRT Reply hereby is FORWARDED to the Commission's Office of General Counsel as a possible prohibited written *ex parte* presentation, for the reasons stated herein.

FEDERAL COMMUNICATIONS COMMISSION


Donald Abelson, Chief
International Bureau


John Muleta, Chief
Wireless Telecommunications Bureau

⁴⁷ LRT Petition at 5-6

⁴⁸ See *id.* at 2-4, 8-9. See also *Comsat/Intelsat Order*, 17 FCC Rcd at 27763-64, ¶ 52 (finding argument speculative), Opposition at 8.

⁴⁹ LRT Petition at 9